

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of New York on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 08cv3548(LDW)	DATE FILED 8/29/08	U.S. DISTRICT COURT Eastern District of New York
<b>PLAINTIFF</b>  <b>Royal Academy of Dance</b>		<b>DEFENDANT</b>  <b>Steven Atwater, et al</b>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,421,642		See Attached Complaint
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

<b>DECISION/JUDGEMENT</b>
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<b>CLERK</b> Robert C. Heinemann	<b>(BY) DEPUTY CLERK</b> 	<b>DATE</b> 9/2/2008
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

08

3548

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Royal Academy Of Dance

(b) County of Residence of First Listed Plaintiff Bakersfield  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Arent Fox LLP, 1675 Broadway, New York, NY 10019  
Telephone: 212.484.3900

## DEFENDANTS

Steven Atwater, George Elaezer, III,  
Royal Academy of Dance, Inc

County of Residence of First Listed Defendant Suffolk County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

UNKNOWN

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only))

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 3 ☐ 3  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

- |  |   |   |  |  |   |
|--|---|---|--|--|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise<br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Real Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 440 Other Civil Rights | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury - Med. Malpractice<br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><b>Habeas Corpus:</b><br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs.<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other<br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><input type="checkbox"/> 862 Naturalization Application<br><input type="checkbox"/> 863 Habeas Corpus - Alien Detainee<br><input type="checkbox"/> 865 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input checked="" type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 861 HIA (13359)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(p))<br><input type="checkbox"/> 864 SSD Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deposition<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 510 Selective Service<br><input type="checkbox"/> 530 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Consumer Challenge 12 USC 1410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
|--|---|---|--|--|---|

## V. ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Removed from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.)  
Trademark Act of 1946, 15 U.S.C. §§ 1051 et. seq.

Brief description of cause:

Action for counterfeiting, trademark infringement, trademark dilution, and cybersquatting.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/28/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

LOW

MAG. JUDGE

WOW

08-3548

### ARBITRATION CERTIFICATION

I, Janine Gargiulo, counsel for Plaintiff Royal Academy of Dance do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.  
☒ Relief other than monetary damages is sought.

### DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

#### Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County? No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ☒

No \_\_\_\_\_

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes \_\_\_\_\_ (If yes, please explain)

No ☒

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: JG-9609

E-MAIL Address: gargiulo.janine@arentfox.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: 

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gargiulo.janine@arentfox.com  
*Attorney for Plaintiff Royal Academy of Dance*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**ROYAL ACADEMY OF DANCE,**

**Plaintiff,**

**v.**

**STEVEN ATWATER,  
GEORGE ELEAZER, III,  
ROYAL ACADEMY OF DANCE, INC.,**

**Defendants.**

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 29 2008 ★  
BROOKLYN OFFICE

ST  
*[Signature]*

**CV 08 : 3548**

Civil Action No. \_\_\_\_\_

**COMPLAINT AND JURY  
DEMAND**

**WEXLER, J.**

**WALL, M.J.**

**NATURE OF THE CASE**

1. This is an action for counterfeiting, trademark infringement, unfair competition and false designation of origin, trademark dilution, and cybersquatting under the laws of the United States (Trademark Act of 1946, 15 U.S.C. §§ 1051 et. seq.); for trademark infringement and unfair competition under New York state law; and for trademark dilution and injury to business reputation under Section 360-1 of the New York General Business Law. Plaintiff Royal Academy of Dance ("RAD") seeks to enjoin Defendants from using RAD's federally registered trademark and certification mark ROYAL ACADEMY OF DANCE in connection with

Defendants' business and services, and to recover damages for harm caused by Defendants' prior and continuing unlawful use of that mark.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over RAD's federal law claims pursuant to 28 U.S.C. §§ 1331, 1338 and 15 U.S.C. § 1121. The Court has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367 over RAD's claims arising under the laws of the State of New York, including those arising under the New York General Business Law.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because (1) this is an action brought pursuant to the federal Trademark Act of 1946; (2) the parties to this action are citizens of different states; (3) upon information and belief, Defendants all reside in this judicial district; and (4) a substantial portion of the events giving rise to the claims -- namely, Defendants' unlawful use of RAD's federally registered trademark -- have occurred in this judicial district.

4. Upon information and belief, this Court has personal jurisdiction over Defendant Steven Atwater ("Atwater") because he resides in this district and is engaged in substantial and ongoing business in New York.

5. Upon information and belief, this Court has personal jurisdiction over Defendant George Eleazer, III, ("Eleazer") because he resides in this district and is engaged in substantial and ongoing business in New York.

6. Upon information and belief, this Court has personal jurisdiction over Defendant Royal Academy of Dance, Inc., (the "Defendant Studio") because it resides, operates one or more dance studio businesses, and is engaged in substantial and ongoing business for profit in New York.

#### **THE PARTIES**

7. Plaintiff RAD is an international non-profit organization. RAD's international headquarters is located at 36 Battersea Square, London, England. In the United States, RAD operates as a California non-profit organization with its principal place of business at 1412 17th Street, Suite 259, Bakersfield, California. RAD is the world's largest teacher training, examining, and certification body for classical ballet. RAD operates out of roughly eighty (80) locations throughout the world. RAD's mission is to promote international knowledge, understanding, and the practice of dance. RAD trains thousands of dance students and teachers each year. RAD also sponsors the prestigious Genée International Ballet Competition and conducts worldwide annual examinations during which ballet students demonstrate their proficiency. For all of its activities, RAD uses its world-famous and federally registered trademark and certification mark ROYAL ACADEMY OF DANCE.

8. Upon information and belief, Defendant Atwater is an individual residing in the state of New York with a business mailing address of 32 Center Court, Center Moriches, New York.

9. Upon information and belief, Defendant Eleazer is an individual residing in the state of New York with a business mailing address of 32 Center Court, Center Moriches, New York.

10. Upon information and belief, the Defendant Studio is a New York corporation with its principal place of business located at 32 Center Court, Center Moriches, New York. Also upon information and belief, the Defendant Studio operates at least one for-profit dance studio in Suffolk County, New York. Also upon information and belief, Defendants Atwater and Eleazer own and/or control some or all of the operations of the Defendant Studio, including use of the business name and trademark ROYAL ACADEMY OF DANCE.

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

#### **A. RAD'S RIGHTS IN THE ROYAL ACADEMY OF DANCE TRADEMARK**

11. RAD was established in London in 1920. In 1935, RAD received a Royal Charter from British monarch King George V. Since its founding, RAD has developed, promoted, and taught the English method of ballet to dance students and teachers around the world. The scope of RAD's dance education services is vast; in the 2005/2006 season, for example, RAD conducted examinations of over 200,000 ballet students worldwide. RAD has 35 international offices that serve members, students, and teachers in over 80 countries. Many of the world's classically-trained professional dancers have been trained in the English ballet method that RAD promotes, and with which RAD has become virtually synonymous.

12. RAD has operated in the United States since 1956. RAD's operations in the U.S. include, among other things, training and certifying dance instructors, promoting its ballet curriculum, and teaching and conducting examinations of ballet students. RAD also sponsors dance competitions and sells dance-related and/or RAD-related products and publications.

13. RAD owns U.S. trademark registration No. 3,421,642 for the mark ROYAL ACADEMY OF DANCE for a wide range of dance-related services involving, among other things, classes, seminars, workshops, training, entertainment, and performances in the field of

dance (copy attached as *Exhibit A*). RAD has also used and/or is using the mark ROYAL ACADEMY OF DANCE on a variety of dance-related and/or RAD-related goods sold in U.S. commerce, including clothing and dance instructional manuals. RAD also owns British trademark registrations for the mark ROYAL ACADEMY OF DANCE.

14. RAD also uses the mark ROYAL ACADEMY OF DANCE to certify dance instructors who have completed training courses with RAD, paid membership fees, and have thus become uniquely qualified to educate students in and promote RAD's dance system and methods. Use of the mark ROYAL ACADEMY OF DANCE thus distinguishes such certified dance instructors from other instructors who have not undergone such training and become certified by RAD. Some RAD-certified dance instructors are operating in New York.

15. RAD has invested substantial sums of money in developing and promoting goods and services under its ROYAL ACADEMY OF DANCE mark. RAD has offered such goods and services to customers in the United States and around the world.

16. RAD's mark ROYAL ACADEMY OF DANCE has been and continues to be widely publicized through advertising in this judicial district and throughout the United States. RAD has spent a substantial amount of money in connection with such advertising, which has been disseminated via the Internet and other media.

17. As a result of RAD's efforts to promote goods and services offered under it, and on account of its outstanding reputation and good will, RAD's mark ROYAL ACADEMY OF DANCE has become well-known to members of the consuming public as distinctive indicators of the source of the goods and services offered by RAD.



18. RAD's ROYAL ACADEMY OF DANCE trademark is famous, distinctive, and well-known around the world, including among the general consuming public of the United States. That mark has come to symbolize excellence in dance instruction, performance, and competition, and represents the enormous goodwill that RAD has established during its 88 years of providing dance education services. Consumers recognize the mark ROYAL ACADEMY OF DANCE as distinguishing RAD's goods and services from those offered and promoted by others, and as distinguishing dance instructors whom RAD has certified and authorized to use the mark from other dance instructors.

**B. DEFENDANTS' UNLAWFUL USE OF THE ROYAL ACADEMY OF DANCE MARK**

19. Notwithstanding RAD's prior use of, and rights in, the mark ROYAL ACADEMY OF DANCE, Defendants Atwater and Eleazer, and the Defendant Studio, (hereinafter referred to collectively as "Defendants") have adopted and used as a business name and trademark the designation ROYAL ACADEMY OF DANCE in connection with advertising, promotion and sale of dance classes, dance training, and other dance education services.

20. Defendants have also registered, have used, and/or are using the Internet domain name *danceroyalty.com* (the "Domain Name"), at which has existed and/or currently exists a website promoting Defendants' business and services under the mark ROYAL ACADEMY OF DANCE (the "Website"). (See exemplary screen shots attached hereto as **Exhibit B.**)

21. Upon information and belief, Defendants also operate and/or have operated a page on the social networking website *myspace.com* (the "MySpace Page"). The MySpace Page also promotes Defendants' business and services under the mark ROYAL ACADEMY OF DANCE. (See exemplary screen shots attached hereto as **Exhibit C.**)

22. Defendants offer their dance-related services to the same, some of the same, or overlapping class(es) of consumers to whom RAD offers its services.

23. Upon information and belief, Defendants dance-related services are (i) of such lesser quality and/or (ii) so different in kind vis-a-vis those offered by RAD, that Defendants' use of the mark ROYAL ACADEMY OF DANCE has injured or is likely to injure RAD's reputation.

**C. RAD'S UNSUCCESSFUL EFFORTS TO RESOLVE THE MATTER WITH DEFENDANTS AMICABLY**

24. On June 3, 2008, after learning of Defendants' unauthorized and unlawful use of its mark ROYAL ACADEMY OF DANCE, RAD's counsel sent an initial cease and desist letter to Defendants, in which RAD's counsel advised Defendants that use of the business name and mark ROYAL ACADEMY OF DANCE, as well as the use of the Domain Name, Website, and MySpace Page, violated RAD's rights. The letter demanded that Defendants cease and desist from all use of the ROYAL ACADEMY OF DANCE mark, the Domain Name, the MySpace Page, and any other Internet or print materials that violate RAD's trademark rights. RAD's June 3 letter requested that Defendants respond by June 16, 2008. (See copy attached as *Exhibit D.*)

25. On June 13, 2008, Defendant Atwater contacted and spoke with RAD's counsel by phone. During this conversation, Defendant Atwater acknowledged receiving the initial cease and desist letter, asked questions about the terms under which this dispute could be resolved amicably, and told RAD's counsel that he intended to communicate with an attorney about the matter soon. RAD's counsel asked Defendant Atwater to contact him thereafter.

26. On June 27, 2008, RAD's counsel sent an email to Defendant Atwater to follow up. RAD's counsel received no response to this email. (See copy attached as *Exhibit E*.)

27. On July 10, 2008, RAD's counsel sent another letter to Defendants Atwater and Eleazer, both via email and certified mail. This July 10 letter again demanded that Defendants cease and desist from their infringing behaviors. This letter also requested that Defendants respond to RAD's counsel and warned that RAD would take further legal action if Defendants did not do so. RAD's counsel has received no response from Defendants. (See copy attached as *Exhibit F*.) The certified mail letter was returned to RAD's counsel as unclaimed.

**COUNT I  
COUNTERFEITING IN VIOLATION OF 15 U.S.C. § 1114(1)(b)**

28. Paragraphs 1 through 27 of this Complaint are incorporated herein by reference.

29. Defendants have engaged in counterfeiting in violation of 15 U.S.C. § 1114(1)(b).

30. Defendants have made unauthorized use of counterfeit imitations of the mark ROYAL ACADEMY OF DANCE in advertising for, and in connection with, the promotion and sale in U.S. commerce of dance-related services.

31. Upon information and belief, Defendants have intentionally used RAD's federally registered ROYAL ACADEMY OF DANCE mark, or permitted others to use it, to promote and sell dance-related services, knowing that it is not authorized to do so, and that its use of the mark therefore constitutes trademark counterfeiting.

32. Defendants' use of a counterfeit imitation of RAD's mark ROYAL ACADEMY OF DANCE in the manner alleged is likely to cause confusion, mistake, and deception.

33. Defendants' use of counterfeit copies of RAD's mark ROYAL ACADEMY OF DANCE has had a prior and ongoing substantial effect on commerce that may be lawfully regulated by Congress.

34. Defendants' acts complained of herein constitute counterfeiting within the meaning of Section 32(1)(b) of the Trademark Act of 1946, 15 U.S.C. 1114(1)(b).

35. Unless enjoined by this Court, Defendants will continue to use counterfeit imitations of the mark ROYAL ACADEMY OF DANCE, and will thereby cause irreparable damage to RAD. RAD has been damaged by Defendants' unlawful conduct in an amount to be proven at trial.

**COUNT II  
TRADEMARK AND SERVICE MARK INFRINGEMENT  
IN VIOLATION OF 15 U.S.C. § 1114(1)**

36. Paragraphs 1 through 35 of this Complaint are incorporated herein by reference.

37. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in trademark and service mark infringement in violation of 15 U.S.C. § 1114(1).

38. Despite RAD's prior rights in the mark ROYAL ACADEMY OF DANCE, Defendants have used and are using that mark in U.S. commerce, in connection with the sale of goods and services, and in a manner that is likely to cause confusion, mistake, or deception.

39. Defendants' conduct is likely to cause purchasers and others to believe and/or question whether Defendants' products and services are offered, sponsored, authorized, or approved by, or otherwise affiliated with, RAD, when in fact they are not.

40. Defendants' use of the mark ROYAL ACADEMY OF DANCE and the Domain Name constitutes trademark and service mark infringement within the meaning of Section 32(1) of the Trademark Act of 1946, 15 U.S.C. § 1114(1)(a).

41. Defendants' acts of infringement have caused or are likely to cause RAD irreparable injury. Unless enjoined by this Court, Defendants will continue these acts of

infringement to RAD's immediate and irreparable damage. RAD has been damaged been Defendants' unlawful conduct in an amount to be proven at trial.

**COUNT III  
FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, AND  
UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(a)**

42. Paragraphs 1 through 41 of this Complaint are incorporated herein by reference.

43. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in acts constituting unfair competition, false designation of origin, and false advertising in violation of 15 U.S.C. § 1125(a).

44. By using the mark ROYAL ACADEMY OF DANCE notwithstanding RAD's prior rights therein and thereto, Defendants have made and are making false and/or misleading representations that their services originate with, are approved or endorsed by, or are otherwise affiliated or connected with RAD in such a manner as to create a likelihood of confusion among prospective purchasers.

45. Defendants' use of the mark ROYAL ACADEMY OF DANCE and the Domain Name constitutes a false designation of origin within the meaning of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a). Defendants' express and/or implied representations that the sale of their products and/or services originate with, or are approved or endorsed by, RAD constitute use of false descriptions or representations of fact within the meaning of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

46. RAD has been damaged by Defendants' conduct, and Defendants' use of names and marks confusingly similar to those of RAD constitutes unfair competition, entitling RAD to remedies afforded pursuant to Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

47. Defendants' acts of false designation of origin and false advertising have caused or are likely to cause RAD irreparable injury. Unless enjoined by this Court, Defendants will continue these acts of infringement to RAD's immediate and irreparable damage. RAD has been damaged by Defendants' unlawful conduct in an amount to be proven at trial.

**COUNT IV  
TRADEMARK AND SERVICE MARK DILUTION  
IN VIOLATION OF 15 U.S.C. § 1125(c)**

48. Paragraphs 1 through 47 of this Complaint are incorporated herein by reference.

49. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in acts constituting trademark and service mark dilution in violation of 15 U.S.C. § 1125(c).

50. RAD's mark ROYAL ACADEMY OF DANCE is famous within the meaning of 15 U.S.C. § 1125(c).

51. Defendants have made commercial use in U.S. commerce of RAD's famous mark ROYAL ACADEMY OF DANCE with the willful intent to trade on RAD's reputation and/or to dilute of its famous mark.

52. Defendants' use of the ROYAL ACADEMY OF DANCE mark began long after the ROYAL ACADEMY OF DANCE mark had become well-known and famous.

53. Defendants' use of the mark ROYAL ACADEMY OF DANCE has impaired and/or is likely to impair of the distinctiveness and exclusivity of, and/or has harmed and/or is likely to harm the reputation of, RAD's famous mark ROYAL ACADEMY OF DANCE.

54. Defendants' activities complained of herein constitute trademark and service mark dilution within the meaning of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

55. Defendants' conduct has caused and/or is likely to cause RAD irreparable injury, loss of reputation, and pecuniary damage. Unless enjoined by this Court, Defendants will continue to willfully dilute the mark ROYAL ACADEMY OF DANCE, thereby causing or continuing to cause irreparable damage of RAD. RAD has been damaged by Defendants' unlawful conduct in an amount to be proved at trial.

**COUNT V  
VIOLATION OF THE FEDERAL ANTICYBERSQUATTING  
CONSUMER PROTECTION ACT, 15 U.S.C. § 1125(d)**

56. Paragraphs 1 through 55 of this Complaint are incorporated herein by reference.

57. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in acts constituting cyberpiracy / cybersquatting in violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

58. Defendants registered, have used, and are using the Domain Name with a bad faith intent to profit, including by virtue of its confusing similarity to, and likely dilution of, the mark ROYAL ACADEMY OF DANCE.

59. The mark ROYAL ACADEMY OF DANCE was famous, distinctive, and well known to Defendants at the time they registered the Domain Name.

60. Defendants' registration and use of the Domain Name has harmed and will continue to harm the goodwill represented by the mark ROYAL ACADEMY OF DANCE (i) by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Internet sites accessible under that domain name, and/or (ii) by diluting it.

61. Defendants' conduct has caused and/or is likely to cause irreparable injury to both the public and RAD. Unless enjoined by this Court, Defendants will continue to engage in cybersquatting, thereby deceiving the public and causing RAD immediate and irreparable damage.

#### **COUNT VI COMMON LAW TRADEMARK INFRINGEMENT**

62. Paragraphs 1 through 61 of this Complaint are incorporated herein by reference.

63. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in acts constituting common law trademark infringement under New York law.

64. Defendants have advertised, marketed and sold their dance-related goods and/or services in commerce under the name ROYAL ACADEMY OF DANCE without seeking RAD's consent, thereby infringing RAD's ROYAL ACADEMY OF DANCE mark.

65. Defendants' use of a mark identical and/or confusingly similar to RAD's mark ROYAL ACADEMY OF DANCE in the advertisement, marketing, and sale of Defendants' dance-related goods and/or services is likely to cause confusion, mistake, or deception as to the source or origin of Defendants' products and/or services.

66. Upon information and belief, Defendants' use of marks and domain names identical and/or confusingly similar to RAD's mark was calculated to deceive or confuse the public and to enable Defendants to profit unjustly from RAD's goodwill in the ROYAL ACADEMY OF DANCE mark. That conduct constitutes infringement of RAD's common law rights in the ROYAL ACADEMY OF DANCE trademark.

67. Defendants' conduct has caused and/or is likely to cause RAD irreparable injury, loss of reputation, and pecuniary damage. Unless enjoined by this Court, Defendants will



continue these acts of infringement, thereby deceiving the public and causing RAD further irreparable damage.

**COUNT VII  
COMMON LAW UNFAIR COMPETITION**

68. Paragraphs 1 through 67 of this Complaint are incorporated herein by reference.

69. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in acts constituting common law unfair competition.

70. Defendants' use of a mark and domain name identical to and/or confusingly similar to the mark ROYAL ACADEMY OF DANCE falsely suggests that they and their business and services are, are associated with, or are sponsored, licensed, or authorized by, RAD.

71. Upon information and belief, Defendants' use of marks and domain names identical and/or confusingly similar to RAD's mark was calculated to deceive or confuse the public and to enable Defendants to profit unjustly from RAD's goodwill in the mark ROYAL ACADEMY OF DANCE. That conduct constitutes unfair competition under New York law.

72. Defendants' unfair competition has caused and/or is likely to cause RAD irreparable injury, loss of reputation, and pecuniary damage. Unless enjoined by this Court, Defendants will continue these acts of unfair competition, thereby causing RAD further irreparable damage.

**COUNT VIII  
TRADEMARK AND SERVICE MARK DILUTION UNDER SECTION  
360-7 OF THE NEW YORK GENERAL BUSINESS LAW**

73. Paragraphs 1 through 72 of this Complaint are incorporated herein by reference.

74. As a separate cause of action and ground for relief, RAD alleges that Defendants have engaged in acts constituting common law trademark and service mark dilution.

75. Defendants have used and continue to use the mark ROYAL ACADEMY OF DANCE in advertising, marketing, and selling goods and/or services in such a manner as to create a likelihood of confusion among prospective purchasers, thereby inducing purchasers and others to believe, contrary to fact, that Defendants' products and services are rendered, sponsored, or otherwise approved by or connected with RAD. These acts have damaged, impaired, and diluted that part of RAD's goodwill symbolized by the mark ROYAL ACADEMY OF DANCE, to RAD's irreparable damage.

76. The nature, probable tendency, and effect of Defendants' use of the ROYAL ACADEMY OF DANCE mark is to dilute the distinctive quality of RAD's trademark and/or to injure RAD's business reputation.

77. Defendants' unlawful conduct violates Section 360-1 of the New York General Business Law.

78. Defendants' unlawful conduct has caused and/or is likely to cause RAD irreparable injury, loss of reputation, and pecuniary damage. Unless enjoined by this Court, Defendants will continue these acts of infringement, thereby deceiving the public and causing RAD further irreparable damage.

**WHEREFORE**, RAD prays for judgment against Defendants as follows:

(1) Pursuant to 15 U.S.C. § 1116, and the law of the State of New York, that Defendants and each of their agents, servants, employees, attorneys, assigns, and all others in privity or acting in concert with Defendants be permanently enjoined from:

(a) Using the name or mark ROYAL ACADEMY OF DANCE, the domain

name *danceroyalty.com*, and any other name, domain name, or mark that includes or is confusingly similar to RAD's ROYAL ACADEMY OF DANCE mark, in the advertising or sale of any goods or services;

- (b) Using in any manner any service mark, trademark, certification mark, trade name, domain name, trade dress, words, numbers, abbreviations, designs, colors, arrangements, collocations, or any combinations thereof which would imitate, resemble or suggest RAD's ROYAL ACADEMY OF DANCE mark;
- (c) Otherwise infringing RAD's trademarks, service marks and trade names;
- (d) Unfairly competing with RAD, diluting the distinctiveness of RAD's famous trademarks, service marks and trade names, and otherwise injuring AOL's business reputation in any manner;
- (e) Publishing or sending any e-mail or other messages, including via chat rooms and Internet bulletin boards, using ROYAL ACADEMY OF DANCE mark or any domain name or mark confusingly similar thereto;
- (f) Using, registering or reserving any domain name that includes or is confusingly similar to RAD's ROYAL ACADEMY OF DANCE mark;

(2) Pursuant to 15 U.S.C. § 1118 and the law of the State of New York, that Defendants be directed to deliver up for destruction all software, computer screen printouts,

promotional materials, handouts, advertisements, labels, signs, prints, packages, wrappers, photographs, videos, receptacles and all other materials in their possession or under their control that resemble or bear RAD's ROYAL ACADEMY OF DANCE mark, or any other reproduction, counterfeit, copy or colorable imitation of RAD 's mark and all plates, molds, matrices, and other means of making or duplicating the same;

(3) Pursuant to 15 U.S.C. § 1117 and the law of the State of New York, that Defendants account for and pay to RAD damages in an amount sufficient to fairly compensate RAD for the injury it has sustained, plus all profits that are attributable to the infringing sale of goods or services under the marks complained of herein, and further that the amount of the monetary award granted herein be trebled in view of the willful and deliberate nature of Defendants' unlawful conduct;

(4) Pursuant to 15 U.S.C. § 1117, that RAD be awarded statutory damages in an amount to be determined by the Court;

(5) RAD be awarded punitive damages in an amount sufficient to deter Defendants from engaging in unlawful conduct in the future.

(6) Pursuant to 15 U.S.C. § 1117 and the law of the State of New York, that Defendants be ordered to pay to RAD the costs of this action and RAD 's attorney fees;

(7) Pursuant to 15 U.S.C. § 1125(d), that Defendants be ordered to transfer to RAD the Domain Name *danceroyalty.com*, and any other domain names registered or controlled by Defendants that resemble or contain RAD's ROYAL ACADEMY OF DANCE mark;

(8) That RAD be granted such other, further, different or additional relief as the Court deems equitable and proper.

Dated: August 28, 2008  
New York, New York

Respectfully submitted,

ARENT FOX LLP

By 

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